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17  
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19  
20                   **UNITED STATES DISTRICT COURT**  
20                   **NORTHERN DISTRICT OF CALIFORNIA**

21     CHASOM BROWN, WILLIAM BYATT,  
22     JEREMY DAVIS, CHRISTOPHER  
22     CASTILLO, and MONIQUE TRUJILLO  
23     individually and on behalf of all similarly  
23     situated,

24                   Plaintiffs,

25                   vs.

26                   GOOGLE LLC,

27                   Defendant.

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Case No.: 5:20-cv-03664-LHK

**DECLARATION OF MARK C. MAO IN  
SUPPORT OF PLAINTIFFS' MOTION  
SEEKING RELIEF FOR GOOGLE'S  
FAILURE TO OBEY DISCOVERY  
ORDER**

The Honorable Susan van Keulen  
Courtroom 6 - 4th Floor  
Date: November 23, 2021  
Time: 10:00 a.m.

**DECLARATION OF MARK C. MAO**

1 I, Mark C. Mao, declare as follows.

2       1. I am a partner with the law firm of Boies Schiller Flexner LLP, counsel for Plaintiffs  
 3 in this matter. I am an attorney at law duly licensed to practice before all courts of the State of  
 4 California. I have personal knowledge of the matters set forth herein and am competent to testify.

5       2. I am the lawyer responsible for leading the Plaintiffs' efforts to obtain the identifiers  
 6 and data that Google was required to produce under the April 30, 2021 Discovery Order (Dkt. 147-  
 7 1.) I am also leading the Plaintiffs' efforts with respect to all issues pending before Special Master  
 8 Brush.

9       3. After the Court issued the April 30 Order, I asked Google for assistance in locating  
 10 all identifiers that might be used to query data associated with the named Plaintiffs or their devices.  
 11 I asked for this information in letters dated May 7 and May 11, as well as in meet-and-confer  
 12 videocalls.

13       4. Google repeatedly took the position that it could not produce any so-called  
 14 "unauthenticated" data until Plaintiffs provided cookie values from new private browsing sessions.  
 15 Plaintiffs objected to Google limiting production in this way, but nevertheless provided the  
 16 requested cookie values to Google, and Google thereafter made a very limited production.

17       5. Plaintiffs have persisted in asking Google to produce all of the named Plaintiffs'  
 18 identifiers and data, which is required by the April 30 Order. In the May 19 Joint Case  
 19 Management Statement, Plaintiffs explained how "Google has so far evaded this Order." Dkt. 169  
 20 at 6. Plaintiffs reiterated their concerns in the July 21 Joint Case Management Statement. Dkt.  
 21 224 at 10.

22       6. Plaintiffs have also raised these concerns with Google as part of the Court's three-  
 23 step framework for addressing the disputes referred to Special Master Brush. Dkt. 273 at 1.

24       7. In response to Special Master Brush's request for the parties to summarize their  
 25 disputes, Plaintiffs on September 14 explained that "With dispute P3, Plaintiffs seek clean room  
 26 access and an order requiring Google to produce additional data concerning Plaintiffs. The Court  
 27

already ordered Google to produce this data. Dkt. 147-1 at 2. Google has not complied with that Order. Google refuses to use identifiers linked to Plaintiffs and their devices to produce additional data tied to those identifiers and their variants.”

4       8. Plaintiffs reiterated the same during conferences with Special Master Brush and  
5 counsel for Google, including on September 15, September 22, and October 5. I also raised this  
6 issue with counsel for Google during multiple meet-and-confer videocalls, including on October  
7 1 and October 8. During those calls, I asked Google to review the April 30 Order and the Court's  
8 corresponding instructions and to reconsider its decision to withhold identifiers and data associated  
9 with the named Plaintiffs and their devices. And on October 3, I sent a letter to Special Master  
10 Brush and Google to explain that Plaintiffs still do not have their data pursuant to the April 30  
11 Order.

12       9. During an October 12 conference with Special Master Brush and counsel for  
13 Google, I explained that Google has prevented the parties from making the most of the three-step  
14 process by withholding data and information in violation of the April 30 Order. I noted that the  
15 parties have a legal dispute about what the April 30 Order requires. Counsel for Google did not  
16 disagree. I also noted that Plaintiffs would need to raise this issue with the Court, lest the parties  
17 finish the three-step process without a meaningful data production.

18       10. On October 13, in an update requested by the Special Master, Plaintiffs informed  
19 Special Master Brush and Google of Plaintiffs' intention to move for relief from the Court based  
20 on Google's refusal to comply with the April 30 Order.

21        11. On October 14, Plaintiffs emailed counsel for Google, offering to meet and confer  
22 one more time to discuss these issues. Google did not respond.

23 I declare under penalty of perjury under the laws of the United States of America that the  
24 foregoing is true and correct. Executed this 14th day of October, 2021, at San Francisco, California.

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Mark C. Mao